

W. C. MILES

IBLA 80-162

Decided June 16, 1980

Appeal from decision of the Colorado State Office, Bureau of Land Management, returning handwritten copies of amended location notices as unacceptable for recording certain mining claims.

Reversed and remanded.

1. Federal Land Policy and Management Act of 1976:
Generally -- Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment --
Mining Claims: Recordation -- Words and Phrases

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

"Copy of the official record of the notice or certificate of location" means a legible reproduction or duplicate, except micro-film, of the original instrument of recordation of an unpatented mining claim which was or will be filed in the local jurisdiction where the claim is located or other evidence, acceptable to the proper BLM office, of such instrument of recordation. Under 43 CFR 3833.1-2 there is no express requirement that a machine reproduction be provided. Accordingly, a handwritten

duplicate of a notice of location is acceptable under the regulations.

APPEARANCES: W. C. Miles, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

W. C. Miles appeals the decision of the Colorado State Office, Bureau of Land Management (BLM), dated October 17, 1979, returning handwritten copies of amended location notices as unacceptable for recording four loc mining claims under section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA) and 43 CFR 3833.1-2.

In his statement of reasons, appellant states that the Rio Grande County clerk had sent him a copy of information received from BLM and that such information

stated that: "owners file with BLM amended notices of location which change or alter claim, or site location, and notify BLM of changes of address and changes of ownership * * * [and] an exact, legible copy of the official notices of location of the claim, and an official record copy of the current assessment statement."

Appellant then argues that nowhere was it stated that photostatic copies were required. He indicates that if he had known that photostatic copies were required, he would have sent them.

[1] Section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, to file a copy of the official record of the notice of location for the claim in the BLM office designated by the Secretary of the Interior within the 3-year period following October 21, 1976. Section 314 also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

The corresponding regulation, 43 CFR 3833.1-2(a), reads as follows:

[§] 3833.1-2 Manner of recordation--Federal lands.

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands * * * shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. If state law does not require the recordation of a notice or

certificate of location [of the claim or site, a certificate of location 1/] containing the information in paragraph (c) of this section shall be filed.

The definition of "copy of the official record of the notice or certificate of location" is found at 43 CFR 3833.0-5(i). It reads as follows:

(i) "Copy of the official record of the notice of [sic] certificate of location" means a legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim, mill or tunnel site which was or will be filed in the local jurisdiction where the claim or site is located or other evidence, acceptable to the proper BLM office, of such instrument of recordation. It also includes an exact reproduction, duplicate or other acceptable evidence, except microfilm, of an amended instrument which may change or alter the description of the claim or site.

Nowhere in the definition does it include a requirement that either the reproduction be a machine reproduction or that only photostatic copies are acceptable. The words "reproduction" and "duplicate" are not terms of art. Webster's New Collegiate Dictionary defines "reproduction" as "something reproduced: COPY." Similarly, "duplicate" is defined as "1 : either of two things that exactly resemble or correspond to each other; specif : a legal instrument that is essentially identical with another and has equal validity as an original 2 : COPY, COUNTERPART." Neither word necessarily implies a machine copy.

The definition of "copy of the official record of the notice of [sic] certificate of location" was originally promulgated as proposed rulemaking on April 10, 1978, 43 FR 15102. It was adopted as final rulemaking on February 14, 1979, 44 FR 9722. In neither promulgation was there any mention that a machine copy or reproduction was required. On the contrary, in the Notice of Proposed Rulemaking, the Department stated that "the revised definition is meant to accommodate any filing which is functional for Bureau of Land Management purposes and has been or will be recorded in the county or other local jurisdiction." 43 FR 15102. We hold, therefore, that under the present regulation, a handwritten copy of a notice or certificate of location which was or will be recorded in the local jurisdiction meets the regulatory requirements. See Wilma Hartley, 48 IB 83 (1980).

1/ The bracketed language was inadvertently omitted from 43 CFR 3833.1-2 (1979) upon printing. The correctly promulgated regulation appeared at 44 FR 20430 (Apr. 5, 1979).

Claimants, of course, run the risk that should the handwritten copy not accurately reflect the original notice of location, the original will not be deemed to be recorded and the claim will be deemed conclusively to have been abandoned. But we cannot say that filing a handwritten copy is forbidden by the regulations.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and remanded.

James L. Burski
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

